IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.329 OF 2005
IN
SUMMARY SUIT NO.2722 OF 2004

Shipping Corporation of India Ltd. ..Plaintiffs.

Vs.

Raisoni Exports (I) Pvt. Ltd. ..Defendants.

Mr.Birendra Saraf i/b.M/s.A.Mehta Laljee & Co. for the Plaintiffs.

Mr.Aditya Khandeparkar i/b.M/s.Khaitan & Jaykar for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 13TH DECEMBER, 2005

P.C. :

The suit is filed to recover an amount of Rs.12,97,806.34 together with interest. The suit is based on a dishonoured cheque drawn by the Defendants in the sum of Rs.8,44,588.80. The cheque constituted payment in respect of freight payable by one Sagar Exports. Sagar Exports had entrusted a consignment of goods to be shipped by the Plaintiffs on their behalf. The bill of lading contained the endorsement "Freight Pre-paid" / "Freight not arranged for".

2. Two defences were raised. Firstly, it was

contended that the cheque was issued at the request of one Intercon Agencies who were the common agents for Sagar Exports and the Defendants, with an assurance that the same would not be used except on a written communication by Intercon Agencies that Sagar Exports had failed to make payment in respect of the freight.

3. The defence is without any substance. There is nothing to suggest that the Plaintiffs had agreed to this arrangement. There is nothing to suggest that such an arrangement was arrived at between any of the other parties either. The Plaintiffs were entitled to rely upon the fact that the freight had been pre-paid as clearly endorsed on the bill of lading. The Defendants cannot deprive the Plaintiffs of their right to freight, having represented clearly by issuance of the cheque, that the Plaintiffs were thereby secured.

4. The other defence is that there was a delay of 10 days in the delivery of the consignment. Sagar Exports so far has adopted no proceedings against the Plaintiffs in that regard. If Sagar Exports adopts any proceedings, that will be a matter between the Plaintiffs and Sagar Exports, on which

it is not necessary to say anything in this suit.

5. Even assuming that the Defendant's case regarding the cheque being given as collateral security is true, it would not take the Defendant's case further. Admittedly, Sagar Exports had not made payment and does not intend making payment of the freight. The Plaintiffs therefore are entitled to enforce payment qua the said cheque.

6. There is no defence to the suit. This is clearly a case where the appearance is filed only to delay the decree being passed against the Defendants.

7. Considering the view that I have taken, I do not think it necessary to decide the question of law raised by Mr.Saraf to the effect that as the freight was to be pre-paid, neither Sagar Exports nor the Defendants are entitled to claim a refund thereof.

8. In the circumstances, the Summons for Judgment is made absolute and the suit is decreed as prayed. However, interest after the date of filing of the suit shall be only on the principal sum of Rs.8,44,588.80.

Refund as per rules.